case there is no actual or potential retention of interest in the thing assigned, which is the basis for suit of the nature brought, it is to be regretted as evidencing too great solicitude for the federal jurisdiction.

DIVISION OF DAMAGES FOR PERSONAL INJURY IN ADMIRALTY.—In the early codes of admiralty apportionment of damages resulting from collisions was decreed under certain circumstances, apparently on the ground that collision was a common misfortune to be borne by all parties, and depending most logically, it would seem, upon the principles of general average. Hughes on Admiralty, 276; *Bury* v. *Gold* (1647) Marsden's Ad. Cas. 235. The decisions, however, were in hopeless confusion, Marsden's Collisions 157–171, probably because of the obscurity of the origin of the practice and the consequent diversity of reasons given for it. But the English law was finally crystalized in 1824, when, following the classification suggested in *The Woodrop Sims* (1815) 2 Dods. 83, it was decided in the House of Lords that division of damages should be decreed only in cases of mutual negligence, and that such division should be equal, irrespective of the comparative degree of negligence, because under the circumstances of most decisions a satisfactory determination of the comparative negligence of the parties would be impossible, *Hay* v. *Le Neve*, 2 Shaw 395; and this rule was finally adopted in the United States. *The Catherine* (1854) 17 How. 170; though see *The Victory* (1895) 68 Fed. 395, reversed on another ground in 168 U. S. 410. In this development of the collision rule we see at the same time a shifting from the basis of general average contribution as a result of common misfortune to that of sharing damages resulting from mutual fault, and also the adoption of an arbitrary rule for the division of the burden.

In the case of personal injury from mutual negligence a similar rule of division of damages has now been adopted in the United States, though only after a considerable diversity in the lower courts. *The Max Morris* (1890) 137 U. S. 1, and cases cited. But it was not decided whether the division should be equal or whether it should be apportioned according to the fault of each party. In two cases since *The Max Morris* the damages have been equally divided, but whether because the parties were equally at fault or because the collision rule was followed does not appear. *The Serapis* (1891) 49 Fed. 393, reversed on other grounds in 51 Fed. 95; *Johnson & Co.* v. *Johansen* (1898) 86 Fed. 886. But the Supreme Court in *The Max Morris*, though expressly refusing to decide the proper method of division, and though founding its decision on an extension of the collision rule in which it admits equal division is well settled, seems to favor the method of discretionary apportionment. And the majority of the subsequent cases seem to have followed this practice, ordinarily decreeing a fixed amount without stating its proportion to the entire damage sustained. *The Frank and Willie* (1891) 45 Fed. 494; *The Nathan Hale* (1891) 48 Fed. 698; *The Julia Fowler* (1892) 49 Fed. 277; *The J. & J. McCarthy* (1893) 55 Fed. 85. The most recent decision in point leaves its position undoubted by decreeing that since the negligence of the libelant was greater than that of the boat on which he was injured, he

should be awarded only one-third of his damages. *Oppenheim* v. *The Lackawanna*, U. S. Dist. Ct. S. D. N. Y. Feb. 1907.

Thus the exceptional rule of the early maritime codes in favor of parties to a collision, which was later restricted to collisions from mutual negligence, and then broadened from collisions to a general rule for the entire field of maritime torts, has in its final stage witnessed a return to the original practice of discretionary apportionment, which was abandoned as impracticable in the collision cases. The method has been frequently criticized on this score, and it is said not to have proved a good working rule in those States where, apart from admiralty, it has been adopted by statute. Burdick on Torts, 440 and notes; Wood, Railroads, 1506. This is not surprising when one considers the difficulty of establishing and applying a comparative scale of negligence. It is doubtful whether its acceptance in cases of personal injury will lead to the abandonment of the more arbitrary rule of equal division in the collision cases, even in those courts which admit that the same doctrine underlies both classes.

TORT LIABILITY OF CHARITABLE INSTITUTIONS.—In recent years there has been in the United States a continual succession of decisions involving the tort liability of charitable institutions. They have in the main been confined in their facts to cases of a beneficiary, paying or non-paying, of such an institution, suing it for an injury caused by the negligent act of an ordinary servant, an injury which would in the case of an ordinary person, corporate or natural, be considered a breach of the duty arising from the doctrine of respondeat superior. The unanimity of opinion exempts the charity in such cases. 1 COLUMBIA LAW REVIEW 485; *Parks* v. *N. W. Univ.* (1905) 218 Ill. 381. In only one case of this nature did the facts involve exemption from a more extensive duty—that of *Downes* v. *Harper Hospital* (1894) 101 Mich. 555, in which the corporation was exempted from the duty of providing a safe place for one of its patients who was injured through the failure of the managers to make such provision. The case, however, does not seem to recognize the distinction between such a duty, a failure in which would ordinarily constitute corporate negligence, and the other duty by which the negligence of a servant is imputed to the corporation, but rests its decision on the broad ground of non-liability for the tortious acts of servants. The case of *Fire Ins. Patrol* v. *Boyd* (1888) 120 Pa. 624, does also, it is true, involve the question of a more extensive exemption than that above stated, the injured party being a third person and not a beneficiary, but the decision is partly put on the ground that the institution was of a class well recognized as governmental agencies, as to whom the doctrine of respondeat superior is entirely inapplicable for distinct reasons. Burdick on Torts 113. It is hard to see why any other ground was sought, and the authorities cited for its exemption as a charitable institution are almost exclusively cases involving the former question. The case cannot, therefore, be considered as an authority for the proposition advanced.

In view of the narrowness of the actual decisions in the past it is necessary, in order to determine whether the same result should logically